

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

FILED
CLERK'S OFFICE
OCT 7 2004

Hill Design, Inc.,)	
)	
Plaintiff,)	Civil Action No. 04-30100-KPN
)	
v.)	
)	
Roylco, Inc.,)	
)	October 7, 2004
Defendant.)	

DEFENDANT'S ASSENTED TO MOTION TO TRANSFER

Defendant Roylco, Inc. ("Roylco") hereby moves the Court to transfer the above-captioned Civil Action to the United States District Court for the District of South Carolina, Anderson Division for consolidation with a first filed Action in that court. In support of this request, Roylco submits the following summary of facts.

On May 5, 2004, Roylco filed a Civil Action in the United States District Court for the District of South Carolina, Anderson Division (Case No. 8:04-1397-27) (hereinafter "the South Carolina Action"). Roylco's South Carolina Action seeks, *inter alia*, declaratory judgment of no likelihood of confusion between respective trademarks used by Roylco and Hill, and non-infringement by Roylco's trademarks in view of Trademark Registrations owned by Hill.

On May 20, 2004, Hill filed the present Massachusetts Civil Action against Roylco asserting, *inter alia*, trademark infringement of Hill's Trademark Registrations by Roylco's use of its trademarks (hereinafter "the Massachusetts Action"). The Parties in the South Carolina Action and the Massachusetts Action are identical. The subject

matter of both Actions, as well as the underlying facts on which all claims, defenses and counterclaims are based, are the same.

In the South Carolina Action, Hill filed a Motion to Dismiss Complaint, or in the Alternative, to Transfer. On September 13, 2004, Hill's Motion was denied by the Court. The Court ordered Supplemental Briefing on the issue of Primary Jurisdiction. Moreover, the present Massachusetts action is at the very initial stage of the litigation. The initial Rule 26(c) conference has not yet been held, no discovery has taken place and the Parties desire to avoid duplication of expense.

On October 7, 2004, Hill Design's attorney Garfield Goodrum, Esq. assented to the present Motion to Transfer. In light of the above, the parties hereby move the Court to transfer this Action to the United States District Court for the District of South Carolina, Anderson Division.

Respectfully submitted,

ROYLCO, INC.
Defendant


Dated: 10/7/04

By: 

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CERTIFICATE OF SERVICE

This is to certify that on this 7th day of October 2004 a copy of the foregoing DEFENDANT'S ASSENTED TO MOTION TO TRANSFER, was served by first class mail, postage prepaid on counsel for the Plaintiff, Attorneys Deborah A. Basile and Michael K. Callan, of Doherty, Wallace, Pillsbury & Murphy P.C. at the following address One Monarch Place, Suite 1900, Springfield, MA 01103 and for the Defendant, Mr. Garfield Goodrum of Hill Design, Inc. at the following address 631 Town Hill Road, Reading, VT 05062.



J. Kevin Grogan, Esq.